STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of C.S., M.S., R.B., E.W., and S.B., Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

MELISSA ANN BIRMAN, f/k/a MELISSA STARK,

Respondent-Appellant.

UNPUBLISHED
February 25, 2003

No. 242872
Jackson Circuit Court
Family Division
LC No. 01-000934-NA

Before: Kelly, P.J. and White and Hoekstra, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order terminating her parental rights to her children pursuant to MCL 712A.19b(3)(c)(*i*), (g), and (j).[1] We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

We review a trial court's decision to terminate parental rights for clear error. MCR 5.974(I); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999). If the trial court determines that the petitioner has proven by clear and convincing evidence the existence of one or more statutory grounds for termination, the court must terminate parental rights unless it finds from evidence on the whole record that termination is clearly not in the child's best interests. MCL 712A.19b(5); *In re Trejo Minors*, 462 Mich 341, 353-354; 612 NW2d 407 (2000). We review the trial court's decision regarding the children's best interests for clear error. *Id*. at 356-357.

[1] The trial court's order also terminated the parental rights of non-participating respondents Alan Hemmingesen, the putative father of C.S., Alphonso Boutire, the putative father of R.B., Todd Birman, the putative father of S.B., Irving Williams, who was not identified as the father of any child, and Christopher Robinson, the putative father of M.S. No non-participating respondent has appealed the order. No non-participating respondent or any other person was identified as the father of E.W.

Respondent first argues that the trial court clearly erred in finding that termination of respondent's parental rights was warranted because the conditions that led to adjudication continued to exist and were not likely to be rectified within a reasonable time, MCL 712A.19b(3)(c)(*i*), that respondent failed to provide proper care or custody and could not be expected to do so within a reasonable time, MCL 712A.19b(3)(g), and that it was reasonably likely that the children would be harmed if returned to respondent's custody, MCL 712A.19b(3)(j). We disagree.

The evidence adduced before the trial court established that the children were removed from respondent's custody because she physically abused them and failed to protect the younger children from the sexually aggressive behavior of an older sibling. The evidence also supported the trial court's finding that although respondent complied with some aspects of the parent-agency agreement, she failed to benefit from the services she received. She routinely lied to her service providers and encouraged the children to lie as well. She continued to engage in a physically abusive relationship with her long-term partner. Respondent did not maintain stable employment or suitable housing. No evidence showed that affording respondent further time to attempt to comply with the parent-agency agreement would have resulted in an improvement in respondent's circumstances. Furthermore, the evidence did not show that termination of respondent's parental rights was clearly not in the children's best interests. MCL 712A.19b(5); *Trejo*, *supra*.

Next, respondent argues that she was denied the effective assistance of counsel.[2] We disagree. To establish ineffective assistance of counsel, an appellant must show that counsel's performance fell below an objective standard of reasonableness under prevailing professional norms. Counsel must have made errors so serious that he was not performing as the "counsel" guaranteed by the federal and state constitutions. US Const, Am VI; Const 1963, art 1, § 20; *People v Carbin*, 463 Mich 590, 599-600; 623 NW2d 884 (2001). Counsel's deficient performance must have resulted in prejudice. To demonstrate the existence of prejudice, an appellant must show a reasonable probability that but for counsel's error, the result of the proceedings would have been different. *Id*. at 600. Counsel is presumed to have afforded effective assistance, and the appellant bears the burden of proving otherwise. *People v Rockey*, 237 Mich App 74, 76; 601 NW2d 887 (1999).

Respondent was not denied the effective assistance of counsel. Respondent's assertion that her counsel dismissed her from the permanent custody hearing is completely unsubstantiated by evidence properly on the record before us. Counsel's decisions to refrain from questioning a witness and to present only brief closing arguments were matters of trial strategy. We do not substitute our judgment for that of counsel regarding matters of trial strategy. *People v Rice (On Remand)*, 235 Mich App 429, 445; 597 NW2d 843 (1999). Respondent has not demonstrated that counsel's performance resulted in prejudice, and thus has not overcome the presumption that counsel rendered effective assistance.

---

[2] Respondent did not move for an evidentiary hearing on whether she was denied the effective assistance of counsel; therefore, our review is limited to the facts on the record. *People v Sabin (On Second Remand)*, 242 Mich App 656, 658-659; 620 NW2d 19 (2000).

Finally, we find respondent's argument that the trial court did not state sufficient findings of fact and conclusions of law in support of its decision to terminate her parental rights to be without merit. A trial court must state on the record, or in writing, its findings of fact and conclusions of law with respect to its decision to terminate parental rights. MCL 712A.19b(1). Findings of fact and conclusions of law are sufficient if they are "[b]rief, definite, and pertinent." MCR 5.974(G)(1). Here, the trial court summarized the evidence and recited the facts that supported its conclusion that petitioner established by clear and convincing evidence the existence of one or more statutory grounds for the termination of respondent's parental rights.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Helene N. White
/s/ Joel P. Hoekstra